

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE COBELL, et al., .

Plaintiffs, .

. Civil Action No. 96-1285

v. .

. Washington, D.C.

SECRETARY OF THE INTERIOR, . Wednesday, October 6, 2004

et al., . 3:00 p.m.

Defendants. .

.
.....

TRANSCRIPT OF STATUS CALL
BEFORE THE HONORABLE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: DENNIS GINGOLD, ESQUIRE
AUKAMP & GINGOLD
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-662-6775
KEITH HARPER, ESQUIRE
NATIVE AMERICAN RIGHTS FUND
1712 N Street, N.W.
Washington, D.C. 20036
202-785-4166

For the Defendants: SANDRA SPOONER, ESQUIRE
UNITED STATES ATTORNEY'S OFFICE
Civil Division
555 - 4th Street, N.W.
Washington, D.C. 20001

Bryan A. Wayne, RPR, CRR
Official Court Reporter

APPEARANCES CONTINUED:

For the Defendants: JOHN T. STEMPLEWICZ, ESQUIRE
CYNTHIA L. ALEXANDER, ESQUIRE
JOHN WARSHAWSKY, ESQUIRE
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION
COMMERCIAL LITIGATION BRANCH
1100 L Street, N.W.
Washington, D.C. 20005
202-307-1104
202-616-2237
202-307-0010

Court Reporter: BRYAN A. WAYNE, RPR, CRR
Official Court Reporter
U.S. Courthouse, Room 4808-B
333 Constitution Avenue, N.W.
Washington, D.C. 20001
202-216-0313

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

Bryan A. Wayne, RPR, CRR
Official Court Reporter

1 P R O C E E D I N G S

2 THE DEPUTY CLERK: In the matter of Elouise Cobell, et
3 al, versus Secretary of Interior, et al. Civil action 96-1285.
4 For the plaintiffs Mr. Gingold and Mr. Harper. For the
5 defendants Ms. Spooner, Ms. Alexander, Mr. Stemplewicz, and
6 Mr. Warshawsky.

7 MR. GINGOLD: Good afternoon, Your Honor, and thank
8 you very much for scheduling this status conference. We do not
9 like to burden this Court. We know how busy this Court is.
10 Nevertheless, as a result of the October 1st status conference
11 we thought many issues had been resolved. We believed the Court
12 was very clear and representations were clearly made to this
13 Court.

14 Over the last 24 hours, we've provided this Court with
15 five affidavits: Two from Mr. Remple and three, including a
16 tribal court judge, which specifically provide evidence that the
17 information provided to this court in representations made to
18 this Court made by the government are false. Specifically, we
19 have been informed that checks have not gone out with regard to
20 leasing activities. Specifically, Your Honor, I myself --
21 Mr. Harper and I were at the Navaho reservation on Monday. We
22 left on Sunday, we came back late yesterday, and the reason we
23 filed the notice when we did is because that was as soon as we
24 could do anything on a return from the Navaho reservation.

25 I myself had 87 telephone calls with regard to the

1 fact that trust beneficiaries were turned away from agency
2 offices on Monday and Tuesday. In fact, I had calls this
3 morning where information was still being refused to trust
4 beneficiaries with regard to leasing activities, probate
5 activities, balances and accounts, disbursement of funds, holds
6 placed on the accounts, and virtually everything surrounding the
7 trust.

8 The statements that have been represented to us by
9 trust beneficiaries are that the Interior Department was
10 required to do this because of this Court's order and that they
11 will not -- that Interior officials will not discuss these
12 issues. So, in fact, shortly before coming over here I had a
13 conversation myself with a trust beneficiary who I asked again
14 to call the agency office before I left to make sure the
15 information that I'm giving to you is accurate. She did, and
16 she told me that her agency office explicitly told her that
17 they'd had a meeting about what this Court ordered on October 1.
18 They had the meeting yesterday afternoon, and during the course
19 of their meeting and conference call, their position remained
20 the same: They cannot talk to her about her trust account. They
21 cannot talk to her about her land.

22 One other individual with whom I spoke shortly before
23 coming over here is an individual who wanted to get a copy of
24 her deed. Land had been given to her through a gift conveyance
25 by her relatives. She had a title status report. The title

1 status report was provided to her in early September. All she
2 wanted was a copy of her deed. She needed information because
3 she was seeking a mortgage. She couldn't get the information;
4 they wouldn't talk to her.

5 I talked to a banker Wisconsin who is trying to
6 provide mortgage financing to a trust beneficiary on another
7 matter. He needed the documentation with regard to the trust
8 assets. He was unable to get that information. I talked to him
9 as recently as this morning.

10 So, Your Honor, notwithstanding the representations
11 made to this Court, the problems remain the same.

12 Mr. Harper, if the Court permits, has had several
13 conversations with tribes and trust beneficiaries beyond mine.
14 Among us, we've probably had 200 or more telephone calls from
15 trust beneficiaries just on the fourth and fifth of October.
16 The evidence is pretty clear what's going on, Your Honor, and
17 let me provide something to this Court that was, as we
18 understand it, taken down from the Anadarko Agency door
19 yesterday.

20 For the record, this is a notice that was on the
21 agency door. It was consistent with the notice or information
22 that was on a recording when a trust beneficiary called the
23 Anadarko Agency. It is a bold notice, language, and it says:
24 "Due to the September 29, 2004, Cobell Court order, we cannot
25 discuss any trust transactions or matters at this time with

1 members of the plaintiff class, as determined by the Federal
2 Court. All realty and soil and moisture offices are closed for
3 business until further notice."

4 And then it goes on, Your Honor, to identify that
5 trust beneficiaries are to call one of three plaintiffs'
6 lawyers, and it says business related to nontrust matters will
7 continue, and the date is October 1, 2004, Anadarko Agency and,
8 Your Honor, it was on the door yesterday. And, in fact, trust
9 beneficiaries went to Anadarko to try and talk to the people.
10 They couldn't talk to anyone and, in fact, the agency was
11 closed.

12 So, Your Honor, we are not speculating here. This is
13 real, and we believe it's in defiance of what this court has
14 clearly stated.

15 One other point which I think worth noting, in
16 addition to the various other matters, it was our understanding
17 that we had a discussion on Friday concerning transactions that
18 had been agreed to, and transactions had been negotiated and
19 agreed to and otherwise were ready to go forward, and it was our
20 understanding those transactions could continue to go forward.
21 It is our understanding that although those transactions
22 continued to be in suspense, that no further business would be
23 done, and we don't have any idea when and how and what
24 information is provided in that regard.

25 But, in reality, the trustee has now repudiated the

1 trust. The trustee is refusing to discuss any information with
2 regard to the trust beneficiaries. It is absolutely false that
3 checks have not been withheld. It is absolutely false that
4 disbursements have not been withheld, and we have trust
5 beneficiaries who are in desperate need of relief. We don't
6 know when this is ever going to end, Your Honor, but we've been
7 through this before. We've been through the check situation
8 when the IT systems were ordered to be off the Internet, and
9 Justice Department lawyers stood up in front of you and told you
10 flat out the only checks that weren't going out were checks for
11 MMS, and the argument was MMS had further difficulties because
12 of being off the system.

13 The reality, Your Honor, at that point in time, it
14 wasn't because of that; it's because of with MMS they had
15 converted to a new computer system that had less capacity then,
16 believe it or not, the Legacy System. In addition, Tex Hall
17 testified in response to specific questions that MMS checks that
18 were not going out, there were grazing checks and ranching
19 checks, and he specifically testified to that under oath.

20 Your Honor has never been provided with candid,
21 accurate, or complete information by the government, and every
22 single time they stand up in front of you, they deceive you.

23 Your Honor, with your leave, I would like to have
24 Mr. Harper explain some of the further discussions which
25 identify and help explain the scope of this problem.

1 THE COURT: All right. Thank you.

2 MR. HARPER: Thank you, Your Honor. And, again, thank
3 you for allowing us to come before you today and present these
4 issues.

5 I think, from the affidavits and what Mr. Gingold has
6 presented to you, you understand the scope of this and how it
7 affects individual Indian trust beneficiaries. I just wanted to
8 also bring to your attention that, repeatedly, government
9 officials have not had meetings with tribes as well, on things
10 like education, on things like healthcare. Tribal leadership
11 has traveled many miles to get to places and then told at the
12 door that they need to just go home, that they will not have
13 those discussions. How possibly those things can be related to
14 any order, whether clarified or not, is beyond me.

15 I think we all know what's going on here, and I think
16 you identified it on Friday, Your Honor, and that is, this is
17 retaliation. There has been a disinformation campaign by the
18 government for a long time going out in Indian country, and now
19 this is part of that. They are not -- when they want to act
20 fast, as when they initially got the first order that they said
21 needed clarification, they went out there immediately and said
22 don't talk to anybody. Call your counsel. And we were
23 inundated with phone calls. Why didn't they act fast after
24 Friday when you clarified the order? They didn't. Your Honor,
25 I think that that makes it absolutely clear what the intent,

1 what the motives are here, with the defendants.

2 I have received no less than 10 phone calls or e-mails
3 from tribes. Now, some of them are willing to go on the record,
4 others are not because they are concerned about retaliation,
5 further retaliation. They have dealt with Interior many times
6 before. They have business before Interior on many issues, and
7 they don't want to have that retaliation. But Fort Peck, Fort
8 Belknap, many of the three affiliated tribes. Tex Hall's tribe,
9 they've all had these problems trying to get business done that
10 are wholly unrelated to this issue.

11 So this is having a wide spread effect. There is a
12 virtual panic out there because nobody knows when this is going
13 to stop, and that's part of the reason we're having these
14 issues. They from every state that you could possibly imagine,
15 and it's continuing presently.

16 We just think this cynical maneuver has to stop, and
17 it has to stop immediately. Again, when the government is able
18 to -- when something is working in favor of their disinformation
19 campaign, they're able to get out there immediately to Indian
20 Country, and now somehow they're having difficulties getting the
21 word on the ground, or maybe they're not doing anything at all.
22 We have had no word from Indian country that any of this is
23 stopping. Now, the only indication is that they have taken,
24 because of what we filed last night, today no longer is the
25 answering machine in Anadarko saying -- turning away all trust

1 beneficiaries.

2 Many of these other things continue as we speak.

3 We've had trust beneficiaries call today numerous times, and
4 they're continuing to have these problems. So we ask if you
5 could take some type of immediate action to ensure that there is
6 no continuing retaliation that's causing irreparable harm and
7 widespread panic out in Indian country. Thank you.

8 THE COURT: Ms. Spooner?

9 MS. SPOONER: Your Honor, good afternoon.

10 In many ways, I think it's not surprising that it
11 would take a certain amount of time for an agency of more than
12 70,000 -- I think it's something like 77,000 people -- to get
13 all of the instructions. However, interior began immediately
14 after the conference on Friday, and worked over the weekend to
15 draft instructions. Those instructions were reviewed and
16 obtained legal clearance on Monday, were provided to NBC
17 Washington for distribution. They were distributed in large
18 part on Monday.

19 THE COURT: What is NBC Washington?

20 MS. SPOONER: National Business Center, Your Honor.
21 There was testimony about that during the --

22 THE COURT: Can I have a copy?

23 MS. SPOONER: Of what went -- yes, Your Honor. But I
24 think I have only one.

25 THE COURT: Okay. I'll have a copy made. The reason

1 I had my clerk call at 11:30 this morning was I thought if I had
2 whatever you all are doing -- I understand it takes time, but I
3 thought if I had whatever you all were doing, I might not have
4 to have a hearing today, but since I didn't have anything from
5 you, I had to schedule a hearing.

6 MR. GINGOLD: Your Honor, may we also have a copy
7 because we've not been provided with one?

8 THE COURT: Okay.

9 MS. SPOONER: For some offices, they didn't receive
10 notice until Tuesday. As you know, there are four agencies
11 within the Department of the Interior who still have no access
12 to e-mail as a result of the IT security issue. And so some of
13 those offices were notified by fax, eventually by Intranet. And
14 so it did take a couple of days to get all the information out
15 there.

16 Interior has also had conference calls with senior
17 management in the regions. Senior management within Interior
18 and senior management within the regions yesterday and today.
19 By now, Interior has contacted all of the regions, had personal
20 phone conversations with all the regions, and with the 80, 8-0,
21 agencies, all in an attempt to provide the Court's instructions
22 to them and to provide guidance.

23 To the extent that the Court elects to give credence
24 to the testimony of the plaintiffs' counsel here today, we would
25 simply request the opportunity to provide -- to inquire into

1 what they're talking about. As you know, most of the
2 information they've given us is not something that we can
3 actually inquire into to the extent the information does give us
4 actual sources so that we can inquire. Interior has done that
5 and rectified problems that have been pointed out to us. But
6 when the plaintiffs simply refer to somebody as LP or QR,
7 obviously, it's not a problem that we can resolve unless we know
8 about it. Thank you, Your Honor.

9 THE COURT: Let me -- Well, let's get copies of what
10 went out, and then I may have some questions.

11 MS. SPOONER: Thank you, Your Honor.

12 THE COURT: Why don't you wait and look at what they
13 sent out too before you respond further.

14 MR. GINGOLD: Okay.

15 THE COURT: While we're waiting on that, I take it
16 nothing has changed from the conversation we had on Friday in
17 terms of -- I answered all the questions I think that you
18 raised, and clarified everything that I thought could be
19 clarified at that stage, and nothing's really changed from that,
20 right?

21 MS. SPOONER: I brought up the specific items that we
22 had some concerns about, and one additional item has come up. I
23 have no personal understanding of how this program works,
24 Your Honor, but I understand that Interior, when requested, will
25 provide Native Americans with assistance in writing their wills.

1 As you know, wills can dispose of property, and so it would help
2 us if we had some clarification to the Court as to whether
3 Interior should stop providing this assistance pursuant to the
4 Court's order, or if that can continue.

5 THE COURT: Okay.

6 MS. SPOONER: May I have a moment, Your Honor?

7 THE COURT: Yes.

8 (Deputy clerk returns with copies of document.)

9 MS. SPOONER: Thank you, Your Honor.

10 THE COURT: Do you know when this went out?

11 MS. SPOONER: Your Honor, it initially went out on
12 Monday. Some offices, however, especially those who are not
13 able to receive e-mail, would not have received it until
14 Tuesday.

15 THE COURT: Okay.

16 MS. SPOONER: And I can't be certain that every single
17 office actually received it or who received it, but it went out
18 to all employees through NBC, which is the agency within
19 Interior with the facility to do that, and that was done on
20 Monday.

21 THE COURT: So insofar as you're aware, if in fact FP
22 was told today by a BIA official that no checks would be going
23 out as a result of the Court's order, and no lease payments
24 would be processed until this is taken care of, that BIA
25 official is acting contrary to this Monday memo?

1 MS. SPOONER: If that were the case, Your Honor, that
2 would be true.

3 THE COURT: So the BIA official would be acting
4 incorrectly?

5 MS. SPOONER: That's correct, Your Honor, if that
6 happened. And we would very much like to have the opportunity
7 to find out if it did.

8 THE COURT: Right. And then if she was told this
9 morning that the gag order was still in effect, and her trust
10 check would not be transmitted this morning, that would be
11 incorrect information?

12 MS. SPOONER: I think so, Your Honor, but this is what
13 needs to be clarified. Of course, the information you've been
14 given by counsel for plaintiffs does not in many instances
15 distinguish between communications that do in fact involve the
16 sale of land and those that do not. It if it was a check that
17 didn't go through the routine procedures and involve the sale of
18 land, there might have been a problem. I can't be certain of
19 that.

20 THE COURT: Well, this one said she called to inquire
21 when her lease payment would be paid to her.

22 MS. SPOONER: Then if it purely about a lease
23 payment--

24 THE COURT: Then that would be incorrect?

25 MS. SPOONER: That would be incorrect, yes.

1 THE COURT: And that's what you told me Friday --

2 MS. SPOONER: And contrary to the instructions.

3 THE COURT: -- and that's still your position?

4 MS. SPOONER: We ask you, Your Honor, to clarify that
5 it did not -- that your order does not impact leases, and we
6 understood -- we don't have the transcript yet, but we
7 understood Your Honor to say that that was correct, that it did
8 not impact leases.

9 THE COURT: Right. Now, the order you sent out Monday
10 does not say anywhere, though, that no checks may be withheld?
11 It doesn't expressly address checks at all. Am I correct?

12 MS. SPOONER: I don't know, Your Honor. I don't
13 remember seeing it there. The checks, as you know, are --

14 THE COURT: Did you get your copy back?

15 MS. SPOONER: Yes. The checks, as you know, are
16 mailed centrally from OST, so it's not something that the
17 regions would be mailing directly. But if the Court would like
18 for us --

19 THE COURT: According to the plaintiffs' information,
20 people are being told as of this morning the check can't be
21 mailed because I ordered it couldn't be, which would not be
22 true.

23 MS. SPOONER: If that happened, it would be contrary
24 to the Secretary's instructions. If the Court wishes us to send
25 out a specific instruction, "do not withhold checks," the

1 problem is that, as I indicated, the checks are mailed centrally
2 through OST and OTFM, as the Court received testimony regarding
3 that in the 1.5 trial.

4 THE COURT: So they are not in fact being withheld
5 even if someone is told that?

6 MS. SPOONER: I -- that's correct, Your Honor. They
7 are not being withheld. I heard the Secretary issue
8 instructions that they would not be withheld. I was personally
9 in the room when she did that.

10 THE COURT: Okay. Thank you, Ms. Spooner.

11 MS. SPOONER: Thank you, Your Honor.

12 MR. GINGOLD: Your Honor, a few points before I
13 discuss the notice that is represented to have gone out.

14 The notice that was tacked to the door on the Anadarko
15 Agency that we provided this Court was on that door until close
16 of business yesterday afternoon. At the point in time that the
17 defendants wanted to make sure that the world stopped for the
18 trust beneficiaries, everything was done immediately. Whenever
19 it is convenient, and whenever it is to harm the trust
20 beneficiaries, there is nothing that stops the Interior
21 Department from taking action. Whenever it's to protect the
22 trust beneficiaries, there is always a delay at best. And
23 that's what we have here again, Your Honor.

24 Another thing is, it was categorically stated to you
25 on Friday that the checks were not withheld, that those

1 discussions in the e-mail and memoranda of Swimmer and Erwin
2 were effective musings, that there was nothing to it. It's
3 interesting how those musings are communicated effectively to
4 the field, but the direct instructions are not.

5 I'd also like to point out, no, we're not just dealing
6 with checks, Your Honor, we're dealing with disbursements and
7 withdrawals from trust accounts that go beyond checks. Again,
8 if there's a hold on an account and a person wants to talk to
9 the agency about the hold, so the funds that are either not
10 held, or the funds that are held that shouldn't, be, can be
11 withdrawn, the agency isn't talking to the trust beneficiary
12 about that either.

13 Now, Ms. Spooner raises the issue that they can't
14 probe, I guess, the validity of what plaintiffs represent with
15 regard to these problems, but Your Honor, the evidence in the
16 record is very clear that retaliation is routine and a standard
17 practice. The Special Master explicitly found, and it was not
18 ever refuted or challenged, that there is a palpable fear of
19 retaliation and retribution within the Department of Interior
20 for anything truthfully provided to this Court.

21 Now, what we have here, Your Honor, is, to the extent
22 there's a need to probe this, we would prefer that the Court
23 does it in camera so our clients, trust beneficiaries, who are
24 at the mercy of the BIA in the field, are not punished or the
25 subject of retribution. In the alternative --

1 THE COURT: But how does that allow the defendants to
2 contest the basic information?

3 MR. GINGOLD: Perhaps, Your Honor, we need an
4 anti-retaliation order for our clients. We do have it for the
5 government officials. We don't have that covered to our
6 clients. And, Your Honor, if that's the case, we would
7 appreciate that, and then we will go forward. And as long as we
8 have anti-retaliation order that's effective and can be enforced
9 with all the power this court has --

10 THE COURT: Well, I did one for -- what was her
11 name -- the person who didn't want the function moved New Mexico
12 to --

13 MR. GINGOLD: Mona Infield?

14 THE COURT: Mona Infield. I did a specific order
15 protecting her, didn't I?

16 MR. GINGOLD: No, you did not. She was a government
17 witness. She's a Department of the Interior employee that
18 provided testimony. She was covered by the anti-retaliation
19 order. There was a separate one, Your Honor, entered for a
20 Solicitor's Office attorney -- no, there wasn't either. It was
21 part of this as well. There are two orders, to my recollection,
22 Your Honor. There's an anti-retaliation order entered by this
23 Court and there's an anti-reprisal order that was entered by --
24 that was entered by the Special Master because of the fear that
25 Interior Departments had in talking to him about problems. But,

1 Your Honor, the order that had been entered is May 21, 1999, and
2 it talks about -- and let me read the last paragraph:

3 "It is hereby ordered that the Department of the Interior,
4 together with all of its supervisory officials, are hereby
5 enjoined from take any retaliatory action or, making any threats
6 of such action for providing testimony or information of this
7 action against:

8 "1. One, any person who has been identified as a
9 potential witness in this case on plaintiffs' list of witnesses
10 expected to testify on 'fixing the system.' In response to May
11 4, 1998 scheduling order filed October 19, 1998.

12 "2. Any person who is called upon through legal
13 process, e.g., Notice of Deposition, subpoena, et cetera, to
14 give testimony or provide other information in this litigation
15 or;

16 "3. Any person individually identified by plaintiffs
17 in writing to defendants as a potential witness in this action."

18 Your Honor, none of our clients are currently
19 identified within that. If you would like us --

20 THE COURT: But you could, under that third paragraph,
21 identify these people who could come forward and give affidavits
22 so they could look into the facts.

23 MR. GINGOLD: Absolutely, Your Honor.

24 THE COURT: And they may be protected under that order
25 that I've already done.

1 MR. GINGOLD: And, again, that order was designed
2 originally to protect witnesses with regard to trial one, and as
3 long as it's understood that this covers --

4 THE COURT: Well, you can look at the and order see if
5 it needs to be modified or amended, but on its face it doesn't
6 seem like it would need to be. I'll look at the order again as
7 well, but it seems like it would cover it if you identify the
8 people, and then you have retaliation order in place to protect
9 them. You can provide their names and affidavits to the
10 defendants, and then they can quit shadow boxing and get the
11 true facts.

12 MR. GINGOLD: That's right, and when we have the true
13 facts, the Court can take appropriate action.

14 THE COURT: Right.

15 MR. GINGOLD: Now, Your Honor, let me also point out,
16 and it's been part of the record of this case for more than
17 eight years, the Interior Department doesn't have a compliance
18 system in place to enforce anything. As a matter of fact, what
19 they have had had, and made reference to in various affidavits
20 and in testimony in court and in deposition, is that if
21 instructions are issued, they assume the instructions are being
22 complied with.

23 Your Honor, that assumption has been rebutted
24 repeatedly. So one of the other problems that exist is whether
25 or not the National Business Center --

1 THE COURT: They have an Inspector General, and he has
2 done reports in this case that have been pretty interesting.

3 MR. GINGOLD: Yes, they've been pretty interesting,
4 but as this Court has noted, not complete because they did not,
5 as a matter of fact, finish investigating the issues with regard
6 to the e-mail destruction, and that is one of the reasons this
7 Court referred to the Special Master 37 contempt orders, because
8 of the failure to do a complete investigation. So while the
9 Inspector General has had some interesting language with regard
10 to bunker mentality and things of that sort, he never went to
11 the end of the investigation to establish anything beyond those
12 conclusions, and never reached any conclusions as a matter of
13 law because of the absence. Your Honor, we're dealing with
14 statements that are made to you, explicit statements: Checks
15 were not withheld. Funds were not withheld from our clients.
16 We have information to the contrary. We don't before the
17 Inspector General --

18 THE COURT: Well, let's start with, give me the
19 information in a form that they can respond to. Let them
20 respond, and then we'll see where we are. If you prove your
21 case that that's what's happening, then, obviously, I'm going to
22 take some action.

23 MR. GINGOLD: Thank you, Your Honor.

24 THE COURT: But you have to give them an opportunity
25 to contest it, and I presume the only way to do that is with

1 some sort of nonretaliation order.

2 MR. GINGOLD: We feel it's absolutely essential,
3 especially since we need to be able to enforce something to
4 protect these people based on the history of this case.

5 Now, Your Honor, we were not provided a copy of what
6 the defendants represent -- or the Justice Department represents
7 the defendant sent out to the field, apparently on Monday and
8 Tuesday by e-mail and fax, and, by the way, fax machines work
9 instantly so we don't understand why it takes another 24 hours
10 to do that.

11 But I would like to point out a couple of questions
12 that we have anyway. First, with regard to paragraph number
13 four of the notice that we have been provided. Again, a notice
14 that has been represented as being distributed to all agencies
15 and area offices I suppose, and realty offices on Monday and
16 Tuesday.

17 Paragraph four states specifically, "Communications
18 with class members regarding the implementation [e.g., accepting
19 payment, deed transfer, et cetera,] of a sale, exchange,
20 transfer, conversion of [individual Indian trust], and that had
21 been agreed to by all parties and approved by the Bureau of
22 Indian Affairs prior to August 31, 2004, order are not
23 prohibited by the order."

24 There is another sentence in the paragraph that's not
25 relevant to my question.

1 Your Honor, I don't recall having any discussion or
2 this Court making any statement that that which has been
3 accepted and agreed to by the parties is covered by this unless
4 it's approved by the Bureau of Indian Affairs. We have ample
5 evidence in this litigation that the Bureau of Indian Affairs
6 sometimes can take years before it takes any action. The fact
7 that the parties agreed to it, and the fact they've executed
8 the documents related to it, and in some cases even funds have
9 been escrowed with regard to it, was not conditioned upon
10 approval by the BIA. As a matter of fact, we're not only aware
11 of years for transactions to be approved with regard to land,
12 and we've seen that with regard to Anadarko -- for example, Your
13 Honor, when -- at least as far back as 1999, an original
14 consent was given for the sale of land, and it was only part of
15 this Auction Number 69 that was to be held this September that
16 that was actually going to be held. So, Your Honor, we do not
17 believe it's appropriate to condition an exclusion based on
18 approval of --

19 THE COURT: I thought that Ms. Spooner asked me
20 whether this meant to stop things that had already been
21 approved, where the only question was mailing out the check, or
22 mailing out the deed or whatever it was, where everything was
23 already basically done, and it was just a matter of mailing it
24 out. I thought I answered that that's not a problem.

25 MR. GINGOLD: Your Honor, we don't have the benefit

1 the transcript right now --

2 THE COURT: I understand, but I thought that's what
3 happened. So I don't think this is inconsistent with what I
4 thought happened. Whether that should be the final result,
5 obviously is a problem with the Court answering questions like
6 that off the top of the head at a hearing. But in the interim,
7 I don't have any great quarrel with thinking that things that
8 were already finally approved and done, and it's just a
9 ministerial act of writing the check or whatever, was not
10 intending to interfere with in saying there should be this check
11 on the rights of the trustee -- the holder -- the beneficiary to
12 consult with counsel. It's really too late to consult with
13 counsel if they've already agreed to the sale and the sale has
14 been approved and all that sort of stuff. I'm not purporting to
15 go back and try to set aside any of these sales or anything.

16 MR. GINGOLD: Your Honor, we didn't suggest that. In
17 fact, we suggested that if these sales had been agreed to by the
18 parties --

19 THE COURT: Well, that's what it says, agreed to by
20 the parties and approved by BIA prior to my order.

21 MR. GINGOLD: That's right, but we are sensitive to
22 the in fact that, again, unless this an action that would harm
23 the beneficiaries, the BIA is not going to move quickly. And,
24 Your Honor, let me point something out. This is not a recent
25 problem with the BIA with regard to approval issues. As a

1 matter of fact, when Mr. Harper and I were on Navaho
2 reservation, we were talking to a trust beneficiary whose
3 parents' estate went into probate in 1946, and last year the
4 probate was just completed. We are dealing with real serious
5 problems, and we would like to see -- and that's what we raised
6 with this Court on Friday, to the best of my knowledge, and,
7 again, I will confirm that once we see the transcript, that if
8 the parties had agreed to it, those transactions should be able
9 to go through without further interference, and we did not
10 suggest that any transaction should be set aside. There's a
11 reason for that. These transactions that we discussed were
12 negotiated transactions. The parties understood they were
13 getting whatever value they understood. The purpose of what we
14 did in the TRO was to ensure that the trust beneficiaries had
15 adequate information to make an informed decision.

16 THE COURT: Right.

17 MR. GINGOLD: The fact that they would have the
18 adequate information to have an agreement without the BIA who --
19 I'm not sure what assistance they provide because there's no
20 evidence in this record of more than eight years that they've
21 provided any assistance -- shouldn't affect the ability of the
22 parties to go forward if the transaction was agreed to. So,
23 Your Honor, we would like that language to be stricken, if
24 possible, because there are a number of people who have had
25 transactions, at least based on what I've been told on the

1 telephone, agreed to for some time that have not been approved.

2 Long before, Your Honor, we filed a motion --

3 THE COURT: Well, if they haven't been approved, this
4 language doesn't apply, if they haven't been approved.

5 MR. GINGOLD: No. My understanding is, the
6 transaction can't go forward unless there was an approval, even
7 if it was agreed to prior to even the filing of a TRO. If the
8 parties agree to a transaction, that transaction cannot go
9 forward based on this language, at least as I understand it,
10 unless the BIA approves it. Even if, for example, in January
11 the transaction was approved, or last January the transaction
12 was agreed to by the parties, whether or not the BIA has taken
13 any action. There's no reason to delay --

14 THE COURT: It says agreed to by the parties and
15 approved by BIA prior to my August 31st order.

16 MR. GINGOLD: Yes, but my point is, many transactions
17 have been agreed to but there's never been an approval by the
18 BIA. Why should --

19 THE COURT: I understand. If they haven't been
20 approved by BIA prior to my August 31st order, then the notice
21 is going go to them, and this isn't saying to the contrary.

22 MR. GINGOLD: No, but what I'm suggesting, Your Honor,
23 is, for those trust beneficiaries who agreed to a transaction,
24 whether it was six weeks ago or six years ago, and the BIA
25 hasn't taken action to approve it, that transaction should be

1 able to go forward.

2 THE COURT: After the notice.

3 MR. GINGOLD: Well, Your Honor, if they understood
4 what they were negotiating, the purpose of the notice isn't
5 necessary.

6 THE COURT: The purpose of the notice is to ensure
7 from this point forward that those who have not been approved
8 get the notice.

9 MR. GINGOLD: Right, even after they've agreed to the
10 transaction.

11 THE COURT: Even though they agreed to the
12 transaction, yes.

13 MR. GINGOLD: Your Honor, there --

14 THE COURT: I'm treating everybody exactly the same
15 there.

16 MR. GINGOLD: Okay, then we --

17 THE COURT: The only ones I'm not treating the same
18 are those where it had already been approved by BIA, and then
19 that's really the final sale, and I'm not setting aside any
20 sales.

21 MR. GINGOLD: And I would assume, then, that under
22 those circumstances, approval will not be unduly withheld or
23 denied, correct, at this point in time for those that have been
24 agreed to?

25 THE COURT: Well, they can't approve any more until

1 they get the notice.

2 MR. GINGOLD: I know, but once the notice --

3 THE COURT: Once the notice goes out -- I haven't
4 interfered with anything once the notice goes out once the
5 notice goes --

6 MR. GINGOLD: So we can go forward?

7 THE COURT: All I've done is say notice. The person
8 can waive counsel, or can meet with counsel and then say, "I
9 want to go forward," whatever they want to say.

10 MR. GINGOLD: And we can provide this Court, for
11 example, with individuals who wanted to go forward without the
12 need for notice, correct?

13 THE COURT: Sure.

14 MR. GINGOLD: Okay, and that could be expedited?

15 THE COURT: Sure.

16 MR. GINGOLD: Terrific.

17 THE COURT: They can waive the right to notice, I
18 presume. All I said in the order was, waive right to consult
19 with counsel, but I don't know of any reason somebody who
20 specifically wants to come in and say, "I not only waive my
21 right to consult with class counsel, I waive my right to any
22 notice, "can do that, too, as far as I know.

23 MR. GINGOLD: Your Honor, many of the individuals with
24 whom I've spoken, and which Mr. Harper has spoken --

25 THE COURT: Would like to do that.

1 MR. GINGOLD: Well, actually, have had counsel.
2 We're talking about -- Your Honor, there were transactions that
3 are million dollar transactions.

4 THE COURT: Okay.

5 MR. GINGOLD: They've had counsel. These are
6 sophisticated individuals.

7 THE COURT: Right.

8 MR. GINGOLD: So they've actually had counsel and they
9 --

10 THE COURT: They can waive everything.

11 MR. GINGOLD: Terrific.

12 I would also like to point to paragraph number eight.
13 What we have here is the government's definition of what this
14 class is, and as this Court knows, that's not what we've
15 described as our case, and the government really -- it's usually
16 up to the plaintiff to describe the case, it's not up to the
17 defendants. As we have said and we have learned in eight years
18 of this -- more than eight years of this litigation, there are
19 individuals who are trust beneficiaries because they own
20 interest in lands that have never had an account, although they
21 should have had an account. The former Special Trustee, Mr.
22 Homan, explicitly testified that all trust beneficiary should
23 have an account. So the fact that they do not have an account,
24 or they formerly had an account, shouldn't determine whether or
25 not they're covered by this. If they are trust beneficiaries

1 and they are beneficial owners of trust assets, Your Honor, that
2 is who the members of this class are.

3 THE COURT: Well, is there a roster somewhere that the
4 employee receiving this would know that? I suggest there's not.

5 MR. GINGOLD: Your Honor, there's no roster --

6 THE COURT: So for the employee receiving this, why
7 isn't this good enough to tell them what to do?

8 MR. GINGOLD: Well, for example -- as we have been
9 told frequently by the government, one of our named plaintiffs,
10 Mr. Molson, doesn't have an account but he has trust land. He
11 is clearly a trust beneficiary, and he would be excluded.

12 THE COURT: At our October 19th hearing you can give
13 me some specific language if you want to try to modify that.

14 MR. GINGOLD: Okay.

15 THE COURT: You have to look at this from the point of
16 view of the employee that's getting this notice and how they're
17 going to identify those people.

18 MR. GINGOLD: So it's basically a convenience issue at
19 this point in time?

20 THE COURT: It's a practical issue of saying class
21 members are present former employees of IM accounts, and anybody
22 who claims to be a beneficiary or something or other. I mean,
23 how does that identify anybody for the employee who gets this
24 notice? It doesn't do a thing toward --

25 MR. GINGOLD: Well, that's actually practically easy,

1 Your Honor. For example, Tom Molson is identified as an owner
2 of trust land, but he doesn't have an account.

3 THE COURT: Identified by Interior?

4 MR. GINGOLD: Beg your pardon?

5 THE COURT: Identified by Interior?

6 MR. GINGOLD: Yes, he is.

7 THE COURT: In what record? How does the employee
8 figure that out? That's what I'm talking about.

9 MR. GINGOLD: Well, if the realty office --

10 THE COURT: This is the notice going to the employees.

11 MR. GINGOLD: But, Your Honor, we're dealing with land
12 sales. If the realty office has him identified as a trust
13 beneficiary, whether he has an account --

14 THE COURT: Okay. Okay. So there's some --

15 MR. GINGOLD: And by the way, you also have --

16 THE COURT: So there's some language that would easily
17 cure that, you think?

18 MR. GINGOLD: That's correct, and, also, Your Honor,
19 although we are all aware of the problems with regard to LRIS
20 and IRMS, individuals are identified with regard to ownership in
21 those particular systems that do not -- are not identified as
22 having an account. For example, and let me just point this out,
23 and this Court went through a fairly lengthy examination of
24 Donna Erwin during trial one in this regard. The question was,
25 what happens when accounts are closed, when accounts are off the

1 system?

2 Because Donna Erwin testified that if there is no
3 activity -- transaction activity on an account for an 18-month
4 period, the practice was to close the account. And you
5 explicitly asked Donna Erwin, "What happens when you close the
6 account?"

7 And Donna Erwin responded, "The information is off the
8 system and lost.

9 And this court responded, "Lost forever?"

10 And Ms. Erwin said, "Forever."

11 That was the explicit dialogue. So, Your Honor, it is
12 a little more complicated than that because we've had at least
13 evidence of significantly in excess of a hundred thousand
14 accounts closed since this litigation was filed. Whether or not
15 these people own interest in land -- because if the -- if the
16 transactions were not recorded on the Interior systems, whether
17 or not they were recorded on compacting or contracting tribe
18 systems, those are accounts -- these people wouldn't be covered
19 based on the language. So that's an additional problem,
20 Your Honor. But there is information -- the land record
21 information should identify that independent of the transaction
22 information.

23 Now, if this Court would like us to provide
24 clarification, we will certainly do that.

25 THE COURT: Any suggestions you want of how the notice

1 should be modified or changed, you can make before that October
2 19th hearing so they can respond.

3 MR. GINGOLD: And, Your Honor, we also believe it
4 would be very helpful if in addition to a notice that goes out
5 that says don't withhold checks, that a notice goes out, again,
6 very simply, to people who can understand simply, this applies
7 to land sale transactions. The operative paragraph, based on
8 what this Court has said, is paragraph four. That's the key
9 paragraph in this entire notice. So, therefore, everything
10 else, all communications in the ordinary course of business,
11 whether you're dealing with probate, ownership records,
12 confirmation, information necessary for mortgages, everything
13 else is okay. That's what we've been talking about here. It
14 seems to me, based on the --

15 THE COURT: I'm not going that far. I haven't said
16 everything else is okay.

17 MR. GINGOLD: All right.

18 THE COURT: All I said in the august 31st order was,
19 this is what I'm doing on land sales.

20 MR. GINGOLD: No, no. I'm saying --

21 THE COURT: The government then raised two through
22 eight, other items, and that's what I said I'm going to hear
23 more about all those other items October 19.

24 MR. GINGOLD: No, but all my point was, in that
25 interim period of time, there's no restriction on communication

1 with regard to those other items.

2 THE COURT: I haven't said that.

3 MR. GINGOLD: Oh. There is.

4 THE COURT: No, I haven't said either way. I said I
5 don't know enough about them to express a view. If they are
6 covered by the December 2002 order, they're covered by it. I
7 don't know enough about them. You and the government know more about
8 what all those other programs are than I do. I don't know
9 anything.

10 MR. GINGOLD: No, but for example, Your Honor
11 explicitly pointed out leases. Leases were not covered. For
12 example, there are things that are --

13 THE COURT: Right.

14 MR. GINGOLD: -- easy to identify.

15 THE COURT: Right.

16 MR. GINGOLD: It would seem to me, to avoid further
17 confusion of --

18 THE COURT: But their number one here only says -- the
19 order says, sale, exchange, transfer, conversion. I mean, I
20 don't know how they could make it more clear. You're saying
21 they don't need all of this?

22 MR. GINGOLD: No. All I'm saying is, you made it very
23 clear in your original order and that didn't stop it. What
24 we have here is just a limitation with regard to the sale,
25 exchange, transfer, or conversion of individual Indian trust

1 land. That's all we're talking about right now with regard to
2 the communications.

3 THE COURT: Well, we don't have just that. We still
4 have the 2002 order which, as far as I know, they never sent to
5 anybody. I don't remember any evidence that that was sent to
6 all employees like this one was.

7 MR. GINGOLD: We have no idea either, Your Honor.

8 THE COURT: But if it was sent, you know, it was two
9 years ago, and the likelihood anybody has it at hand is probably
10 not all that great.

11 MR. GINGOLD: And there are new employees that come
12 in, too, so who knows.

13 THE COURT: I mean, I think if you've got specific
14 changes you want to make in this, we ought to take it up at that
15 October 19th hearing, and you out to --

16 MR. GINGOLD: We will do so, Your Honor.

17 THE COURT: -- give them the language.

18 MR. GINGOLD: And, Your Honor --

19 THE COURT: Something specific in the meantime that
20 you think needs to be done about checks -- because her
21 representation is there is no delay in the issuance of checks
22 because they're issued centrally. The misinformation that's
23 given to people, that the checks might be withheld is that,
24 misinformation, and she explicitly conceded today that that's --
25 if an employee said that to this IF, or TF, or whoever that one

1 was, that's incorrect. Is there something more the Court needs
2 to do about that now?

3 MR. GINGOLD: Well, Your Honor, right now you said --

4 THE COURT: And to do it, don't I need an affidavit
5 from TF so that they can find out the facts?

6 MR. GINGOLD: Yes, and we also need an
7 anti-retaliation coverage as well.

8 THE COURT: Right.

9 MR. GINGOLD: And we will provide that language.

10 THE COURT: Okay. Okay. All right, then, the only
11 last question she raised with me is this question about
12 continuing to write wills. What's the plaintiffs' position
13 about that?

14 MR. GINGOLD: Your Honor, we believe that the wills
15 continue. People are in circumstances which require wills to be
16 written. It becomes extremely complicated when people die
17 intestate. Wills should be able to go forward. Otherwise,
18 there will be serious problems.

19 THE COURT: Okay. Any other things that you want to
20 raise today?

21 MR. GINGOLD: No, Your Honor.

22 THE COURT: Ms. Spooner?

23 MS. SPOONER: Just a few points, Your Honor. I'm sure
24 that counsel for plaintiffs did not mean to state to the Court
25 that, even though I think I heard it from both of them, that the

1 timing of the Interior sending instructions to the field was
2 different with respect to this latest order than it was with the
3 first one, the record will show that the next business day
4 instructions went out on both, and that instructions continued
5 to go out in the following days. So it's simply not true that
6 the Department of the Interior is using different procedures or
7 different timing to send out the Court's orders.

8 Secondly, Your Honor, we would oppose having an in
9 camera proceeding.

10 THE COURT: I took care of that because I told him get
11 an anti-retaliation order and give you the evidence so you can
12 look at it. I don't want to do anything in camera either.

13 MS. SPOONER: I think it's very important, Your Honor,
14 that the plaintiffs have an opportunity to know what's going on
15 here. In fact, we would ask that the transcript of that
16 proceeding be put on plaintiffs' Web site so that the plaintiffs
17 will know. There are a number of pleadings that -- for
18 instance, their equal access to Justice Act claim was not put on
19 their Web site. So it is important, I think, for the Court and
20 for the parties that the plaintiffs be kept informed of what's
21 going on in the Court here today and in subsequent proceedings.

22 With respect to an anti-retaliation order, Your Honor,
23 it's very clear that the evidence, if you can call it that, that
24 the plaintiffs have submitted today does not establish any
25 retaliation. The issuance of an anti-retaliation order is

1 entirely unnecessary.

2 THE COURT: Well, I think the '99 order is already out
3 there, which I think covers any witness here.

4 MS. SPOONER: Well, if that's the case, Your Honor,
5 that would be fine.

6 THE COURT: I'll look at it again, but I know that --
7 I think that's what I was thinking of in terms of the Mona
8 Infield situation that I was applying, and I know that was
9 sometime after trial one when the whole Mona Infield thing
10 arose. Is my recollection, although I would admit the years are
11 blending together now, but --

12 MS. SPOONER: We would urge the Court to take evidence
13 before it concluded that there was any retaliation going on here
14 rather than simply the statements, often second and third hand,
15 from plaintiffs' counsel.

16 THE COURT: Well, I don't think that that order needs
17 to be modified but, I'll pull it out and look at it again.

18 MS. SPOONER: Thank you, Your Honor.

19 THE COURT: But I think it would cover the situation.

20 MS. SPOONER: With respect to the testimony of Donna
21 Erwin, plaintiffs' counsel has not accurately characterized it.
22 We have briefed it to the Court very recently. So to the extent
23 the court wishes to consider that testimony in the Court's
24 questioning of Ms. Erwin, it is fully briefed, with citations to
25 the record.

1 THE COURT: What's it briefed in connection with?

2 MS. SPOONER: With respect to these matters,
3 Your Honor, the request for a temporary restraining order and
4 the Court's entry of --

5 THE COURT: Before the August 31 order?

6 MS. SPOONER: I think so, Your Honor. I will check
7 that to be certain.

8 THE COURT: Okay.

9 MS. SPOONER: And finally, the Court was --

10 THE COURT: Because I remember what he said being in a
11 footnote somewhere, but I don't remember the response.

12 MS. SPOONER: That's correct, Your Honor. We did
13 respond to it.

14 Finally, the Court was concerned that perhaps Interior
15 employees were not fully informed of the Court's 2002 order, the
16 original class --

17 THE COURT: I don't know that, no.

18 MS. SPOONER: Well, one of the things I want to draw
19 the Court's attention to is the fact that the instructions that
20 went out this week not only gave the individuals information and
21 the text of the Court's most recent order, but also repeated --

22 THE COURT: I saw it repeated some parts of that 2002
23 order, yes. Yes, I did see that on page two and the top of page
24 three; right.

25 MS. SPOONER: Right, Your Honor.

1 THE COURT: Right. I just didn't know if anything had
2 been done in 2002, but I see this in here. And this repeats
3 that thing about routine communications, yes, which I think is
4 important.

5 MS. SPOONER: It is important, Your Honor. Thank you.
6 I've been handed, Your Honor, defendant's supplemental
7 memorandum in opposition of plaintiffs' motion for a temporary
8 restraining order and for preliminary injunction.

9 THE COURT: So that's September 15?

10 MS. SPOONER: Yes, and the Donna Erwin testimony is
11 discussed at page 21.

12 THE COURT: Okay.

13 MS. SPOONER: Thank you very much, Your Honor.

14 THE COURT: Okay. I mean, I understand, Ms. Spooner.
15 I was upset with you the other day because of where we were
16 then. I understand the Interior Department is a big department
17 and it takes time to get the right instructions out to
18 everybody, and I'm not hollering at you today, you notice,
19 because I know it takes some time in a big department, but I do
20 want people to quit telling people that I've ordered checks not
21 to go out. I haven't ordered that.

22 MS. SPOONER: I understand that, Your Honor.

23 THE COURT: And you told me the Secretary hasn't
24 ordered that, and for employees to keep telling people that I've
25 ordered if does annoy me, to say the least.

1 MS. SPOONER: I have not spoken to her about it, but
2 I'm confident that it annoys the Secretary as well.

3 THE COURT: I'm glad to hear that.

4 MS. SPOONER: Running a large organization such as
5 Interior is not as easy as it might seem, and sometimes --

6 THE COURT: I'm aware of that, and I'll leave it at
7 that.

8 MS. SPOONER: Your Honor, with respect to the Court's
9 reaction at the hearing we had on Friday, the thing that's most
10 disturbing to us about that is the Court's reaction was prompted
11 by wholly incompetent, even misleading evidence from the
12 plaintiffs' counsel. They submitted to you one tiny piece of an
13 e-mail without verification, without any indication as to what
14 was behind it. It was not worthy, I think, of the Bar, and I
15 think it's only fair that the Court have all of the evidence.
16 Thank you, Your Honor.

17 THE COURT: I agree we need all the evidence, but I
18 will tell you what I said on Friday was what most disturbed me
19 about that whole scenario was the thought process that went
20 into, "We've been blessed by another order by Judge Lamberth,
21 and now we're going to stop all checks." There was a thought
22 process that went into that little memo, even though it carried
23 out, that is very troublesome.

24 MS. SPOONER: Number one, it was not a memo, and it
25 was only part of possible interpretations of the Court's order.

1 I can assure you, Your Honor, that government officials in both
2 the Department of the Justice and Department of the Interior
3 have attempted mightily to construe your order as best we
4 possibly can. We have had some difficulty about it, and there
5 have been some very legitimate questions as to how broad the
6 Court's order is, and given that the Court has concluded that a
7 program under which Interior assists Native Americans to sell
8 their trust land that's been in effect for decades under
9 regulations that no one has challenged, the Court now concludes
10 that that's a violation of the 2002 order, is not something that
11 we ever conceived of. So it is important for us to consider
12 these things very carefully, and to consider every possible
13 ramification of the Court's order.

14 Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. GINGOLD: Your Honor, the evidence that was
17 provided to you on Friday was the evidence that we had. The
18 government -- we would never have even had to file a temporary
19 restraining order if in response to a telephone call from me to
20 the Justice Department when we first found out about the auction
21 -- the question was, "Can you give us the information so we can
22 make sure that the trust beneficiaries are given adequate
23 information so this can go forward?" And we were told to go fly
24 a kite, Your Honor. We never get anything from the government.
25 They withhold discovery, and they have, and they've destroyed

1 e-mail. There's ample record of that. That is proven beyond a
2 shadow of a doubt. The only documents we had is what we gave
3 you. If we had more, we would have given you them, too. And
4 Your Honor, I haven't seen the government provide you with this
5 chain of e-mail that was referenced.

6 If in fact there's a chain, we too would like to see it,
7 Your Honor, because we would like to have a complete and
8 accurate record. So if Ms. Spooner has all of it, including the
9 CC's, and everyone else, and the responses from the CC
10 recipients, that's the chain of e-mail. Let's see if it exists.

11 So to the extent it is inaccurate, Your Honor, we welcome
12 accuracy and completeness. We just have never seen it from the
13 government in this litigation. So, Your Honor, we're not going
14 to allow our clients to be damaged based on the fact that the
15 government is not forthcoming with information.

16 What we have we will give you. If they have all the
17 information they claim to have, let's see it, let's not just
18 talk about it. And, again, we are now a week beyond that and we
19 still don't have it. So where is it?

20 I would also like to point out that the evidence of
21 retaliation is not second and third hand representation of
22 plaintiffs' counsel. We have testimony under oath. We have
23 unequivocal testimony under oath, not cute conditioned juats,
24 where people have been harmed, including testimony from the
25 Special Trustee himself, Mr. Homan, from Joe Christie, his

1 Special Assistant; from Mona Infield. We have it, and,
2 Your Honor, it is not a question of speculation. Perhaps the
3 Justice Department, for once, should read the records of these
4 proceedings before making misrepresentations to this Court.

5 So, Your Honor, we appreciate everything that this
6 court is doing. We'd also like to point out that when the
7 notice went out after the 29th, I believe, that the next
8 business day it went to Anadarko to stop all communications with
9 the trust beneficiaries. But it took two business days to
10 correct the problem, Your Honor. That's the point that
11 Mr. Harper and I made. There is a tremendous difference in how
12 the government acts when it wants to harm our clients and the
13 time it takes when this Court orders the government to protect
14 the trust beneficiaries that they have an obligation under the
15 law to protect.

16 THE COURT: I'll see you all on the 19th.

17 (Whereupon, the proceedings in the above entitled matter
18 concluded at 3:58 p.m.)
19
20
21
22
23
24
25

* * * * *

CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify
that the foregoing pages are a correct transcript from the
record of proceedings in the above-entitled matter.

BRYAN A. WAYNE

Bryan A. Wayne, RPR, CRR
Official Court Reporter